

### **REMARKS**

#### **Claim Status**

Claims 1-19, 21, 29, 37, 42, and 47 have been canceled without prejudice.

Claims 20, 22-28, 30-36, 38-41, and 43-46 have been amended to further clarify the present application.

#### **Rejection under 35 USC §112**

Claims 20, 22-28, 30-36, and 38-47 are rejected under 35 USC §112, second paragraph, as being indefinite.

Claims 20, 22-28, 30-36, 38-39, 41, and 43-46 have been amended to address the lack of proper antecedent basis by using more definite terms, including: “upper locking tabs”, “lower locking tabs”, “first channel”, “second channel”, “first ledge”, “second ledge”, “upper end cap”, “lower end cap”, upper opening”, “lower opening”, “upper peripheral edge”, “lower peripheral edge”, “first outwardly extending rim”, “second outwardly extending rim”. The term “a given” has been eliminated from all claims.

Claims 37, 42, and 47 have been canceled without prejudice.

Applicants submit that the amended claims 20, 22-28, 30-36, 38-41, and 43-46 are now definite and in allowable form.

#### **Rejection under 35 USC §102(b)**

Claims 44, 45, and 47 are rejected under 35 USC § 102(b) as being anticipated by Troth (3,941,300).

Troth discloses a container of re-openable type comprising a sleeve-like container portion (14) and a separate closure portion (18), wherein the sleeve portion has snap-type locking tabs (16) for removable securing the closure portion. **The closure portion (18) has a protrusion (26) with an angular ledge face (24) to engage the locking tabs.** (Column 4, lines 1-10) **The locking mechanism relies on the relationship of sizes of angle A and angle B.** (Column 4, lines 26-42) The container is disassembled by grasping the sleeve portion (14) with one hand, grasping the closure portion (18) with the other hand, and pulling the closure portion (18) from the container to force the locking tabs (16) off the protrusion (26). (Column 5, lines 22-29).

The container of the present application comprises a sleeve-like container portion having locking tabs and an end cap having channels for receiving the locking tabs, wherein the channel is shaped such that the end cap is releasable by twisting the end cap relative to the sleeve. (p. 1 line 32- p. 2 line 3; p.2 lines 20-21)

FIGs 16A-C, and 17A-C demonstrate the two-way twisting-release mechanism: the end cap is twisted such that the trapezoidal locking tab (252) rides up the side edge of channel (258) and disengages from the channel. Moreover, the locking tab structure may be tailored to allow the one-way releasing mechanism, in which the end cap can be released only by twisting it in one direction. FIGs 19A-D, and 20A-D demonstrate the one-way twisting-release mechanism: the rectangular locking tab (272) must be twisted toward the ramp edge of the channel (276) direction in order to ride up the ramp and disengage from the channel. (p. 13-14)

**In contrast to Troth, the present application relies on a twisting motion to release the end cap from the container. Additionally, the channel structure on the end cap and the shape of locking tab shape on the sleeve portion may be designed to allow either one-way twisting or two-way twisting release mechanism. Troth does not disclose or suggest the container with the end cap that can be released by a twisting motion.**

Claim 44 has been amended to further clarify that the end cap-releasing mechanism of the container of the present application is achieved via a twisting motion. As such, Claim 44 and Claim 45 which depends therefrom, are patentable over Troth.

Claim 47 has been canceled without prejudice.

#### **Rejections under 35 USC §103(a)**

Claims 20, 22, 27, 28, 30-36, 38, 39, 41, 42, 46, and 47 are rejected under 35 USC § 103(a) as being unpatentable over Troth in view of Brain (GB Patent No. 2 349 143).

Brain discloses a container including a sleeve portion having multiple locking tabs and a closure capable of engaging the locking tabs. **The closure (12) comprises a short cylindrical section (50), wherein the lower end of the cylindrical section (50) is closed by a continuous web (52) spanning the end of the cylinder section (50).** (p.3, FIGs. 2 and 3) As such, the channel created in the end cap to receive the locking tab is a single continuous channel and the end cap must be pulled from the sleeve portion to disassemble the container. **The continuous**

**channel on the end cap disclosed by Brain has no edge ramp; therefore, the locking tab cannot be twisted to ride up the edge ramp of the channel and disengage from the channel.**

Troth and Brain, taken alone or in combination, do not disclose or suggest the use of discrete channel structure on the end cap or the shape of locking tap on the sleeve portion to provide for either one-way twisting or two-way twisting release mechanism.

Claim 20 has been amended to further clarify that the end cap-releasing mechanism of the container of the present application is achieved via a twisting motion. As such, Claim 20 and Claims 22, 27, 28, 30-36, 38, 39, 41 which depends therefrom, are patentable over Troth in view of Brain.

Claim 46 depends on Claim 44. Claim 44 has been amended to further clarify the twisting motion to release the engaged end cap from the sleeve portion. As such, Claim 46 which depends therefrom is patentable over Troth in view of Brain.

Claims 42 and 47 has been canceled without prejudice.

**Claims 23-36, 40-43 are rejected under 35 USC §103(a) as being unpatentable over the references as applied to claim 20, and further in view of Lindt & Sprungli.**

Lindt & Sprungli discloses a container with a plurality of locking tabs and a pair of end caps. **Although the sleeve portion has opposed first and second curved panels, the end cap of the container has a single continuous channel to engage the locking tabs. Accordingly, the end cap in Lindt & Sprungli cannot be disassembled from the container by a twisting motion since the channel does not have any ramp edge for the locking tabs to ride up and disengage from the channel.**

Troth and Lindt & Sprungli, taken alone or in combination, do not disclose or suggest the use of discrete channel structure on the end cap or the shape of locking tap on the sleeve portion to provide for twisting-release mechanism.

Claims 23-36 and 40-41 depend on Claim 20. Claim 20 has been amended to further clarify the twisting motion to release the engaged end cap from the sleeve portion. As such, Claim 23-36 and 40-41 which depend therefrom, are patentable over Troth in view of Lindt & Sprungli.

Claim 42 has been canceled without prejudice.

Claim 43 has been amended to further clarify that the end cap-releasing mechanism of the container of the present application is achieved via a twisting motion. As such, Claim 43 is patentable over Troth in view of Lindt & Sprungli.

### **Rejection under Obviousness-type Double Patenting**

Claims 20, 22-28, 30-36, and 38-47 are rejected on the ground of nonstatutory obviousness-type double patenting under claims 1-6 of U.S. Patent No. 7,700,775 in view of U.S. Patent No. 5,005,759 to Bouche, DE Patent No. 1536131 to Landor, or Lindt & Sprungli.

Applicants submit herewith an appropriate Terminal Disclaimer to overcome this obviousness-type double patenting rejection. As such, claims 20, 22-28, 30-36, and 38-47 are now in condition for allowance.

### **Conclusion**

In view of the above remarks and amendments, Applicants earnestly request that the application as a whole receives favorable reconsideration and that all pending Claims be allowed.

Respectfully Submitted,

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